DOCKET NO: 218127US8

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF	:	
MIKIO IWAMURA, ET AL.	:	EXAMINER: MATTIS, J.E.
SERIAL NO: 10/044,945	:	
FILED: JANUARY 15, 2002	:	GROUP ART UNIT: 2616
FOR: CALL ACCEPTANCE CONTROL METHOD, MOBILE COMMUNICATION SYSTEM AND BASE STATION DEVICE	:	

APPEAL BRIEF

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

This is an appeal of the final Action mailed November 24, 2006, that presented a final rejection of Claims 1-12. A Notice of Appeal with a three-month extension of time was filed on May 24, 2007.

I. REAL PART IN INTEREST

The real party in interest in this appeal is the Assignee NTT DoCoMo, Inc.

II. RELATED APPEALS AND INTERFERENCES

Appellants, Appellant's legal representative, and the assignees are aware of no appeals which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF THE CLAIMS

Claims 1-12 are pending in this application. Claims 1-12 have been finally rejected and form the basis for this appeal. The attached claim appendix includes a clean copy of appealed Claims 1-12.

IV. STATUS OF THE AMENDMENTS

A Request for Reconsideration was filed on April 24, 2007, which resulted in an Advisory Action being mailed on May 30, 2007 that appears to indicate that the final rejection of Claims 1-12 is being maintained

V. SUMMARY OF THE CLAIMED SUBJECT MATTER[1]

Independent Method Claim 1 sets forth a call acceptance control method in a mobile communication system handling packet users who produce packet calls using a packet switching system and other users who use a circuit switching system for their calls between base stations 10 and mobile stations 60 illustrated in FIG. 1, for example. Note the specification at page 15, lines 13-17, for example. Both kinds of users are connected with shared wireless resources via the mobile stations 60 and calls are made using multiple access and the shared resources. Note page 15, lines 17-22, for example. A resource use condition is measured (for example, by resource measurement device 32 illustrated in FIG. 2) that arises because of existing user connections of both types. Note page 17, lines 6-10, for example. Acceptance of new calls for connection is restricted when a measured value of the resource use condition exceeds a set call acceptance threshold value so that this restriction is dynamically

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[1] It is Appellant's understanding that, under the rules of Practice before the Board of Patent Appeals and Interferences, 37 C.F.R. §41.37(c) requires that a concise explanation of the subject matter recited in each independent claim be provided with reference to the specification by page and line numbers and to the drawings by reference characters. However, Appellant's compliance with such requirements anywhere in this document should in no way be interpreted as limiting the scope of the invention recited in all pending claims, but simply as non-limiting examples thereof.

adjusted by the result of calculating a correction value in accordance with the number of actively connected packet users of the packet switching system (for example, input Xc to adjustment device 34 is dynamically adjusted by adjustment device 34 in response to an input from calculation device 33 that provides the adjusted threshold output value Xc', all as shown by FIG.2). Note page 17, lines 11-22, for example.

As explained in the paragraph bridging pages 5 and 6 of the specification, for example, the two different types of switching systems described above are different as to the amount of resource use. In the case of the circuit switching system, fluctuation as to resources used is comparatively small. On the other hand, the fluctuation is large relative to a packet switching system, due to the burst character of this system. Consequently, in a mobile communication system in which both a circuit switching system and a packet switching system are present, it is not possible to achieve a sufficient guarantee of communication quality in terms of only controlling acceptance of new calls by setting a static call acceptance threshold value such as Xc.

Thus, the method of Claim 1 requires that the correction value is calculated in accordance with the-number of actively connected packet users of the packet switching system and the restriction of new call acceptance is made dynamically based on adjustments made in accordance with the correction value, all as set forth above and in the disclosure of page 17, lines 11-22. Further note the exemplary steps illustrated by the Figure 3 flow chart.

Independent Claim 5 sets forth a mobile communication system that includes the above noted users who produce packet calls using a packet switching system and other users who use a circuit switching system for their calls between base stations 10 and mobile stations 60 illustrated in FIG. 1, for example. Note the disclosure at page 15, lines 17-22, for example. This system includes a transmitting/receiving section

(e.g., transmitters/receiver section 20 of base station 10 of FIG 2) that connects with the packet users and the other users to provide multiple access calls with shared wireless resources via the mobile stations 60 of FIG 1. Note page 16, lines 7-18, for example. The system of Claim 5 also includes a resource measurement device (e.g., 32 of FIG. 2) that measures a resource use condition based upon existing connections provided by the transmitting/receiving section. Note again the exemplary disclosure at page 17, lines 6-10. A call acceptance control device (e.g., 31 of FIG.2) restricts acceptance of new calls by the transmitting/receiving section (e.g., 20 of FIG. 2) when a measured resource use condition value from the resource measurement device (e.g., 32 of FIG.2) exceeds a set call acceptance threshold value Xc that is adjusted to adjust the restriction. In this last regard, a correction value calculation device e.g., (e.g., 33 of FIG.2) calculates a correction value in accordance with a number of actively connected packet users of said packet switching system, and an adjustment device (e.g., 34 of FIG. 2) adjusts the restriction of the new call acceptance by the transmitting/receiving section (e.g., 20 of FIG. 2) in accordance with the correction value from the correction value calculation device (e.g., 33 of FIG.2). Note again the exemplary disclosure at page 17, lines 11-22, as well as the exemplary disclosure associated with the flowchart of exemplary FIG. 3.

Independent Claim 9 sets forth a base station device to provide mobile communications to the above noted packet call users and the above noted other users making the above noted calls between such a base station 10 and mobile stations 60 of FIG. 1, for example. Note the disclosure at page 15, lines 17-22, for example. This base station device includes a transmitting/receiving means (e.g., transmitters/receiver section 20 of base station 10 of FIG 2) for connecting with the packet users and the other users to provide multiple access calls with shared wireless resources via the

mobile stations 60 of FIG 1, for example. Note page 16, lines 7-18, for example. The base station device of Claim 9 also includes a resource measurement means (e.g., 32 of FIG. 2) for measuring a resource use condition based upon existing connections provided by the transmitting/receiving means. A call acceptance restriction means (e.g., 31 of FIG.2) for restricting acceptance of new calls by the transmitting/receiving means (e.g., 20 of FIG. 2) when a measured resource use condition value from the resource measurement means (e.g., 32 of FIG.2) exceeds a set call acceptance threshold value Xc that is adjusted to adjust the restriction. In this last regard, a correction value calculation means (e.g., 33 of FIG.2) calculates a correction value in accordance with a number of actively connected packet users of said packet switching system, and an adjustment means (e.g., 34 of FIG. 2) adjusts the restriction of the new call acceptance by the transmitting/receiving means (e.g., 20 of FIG. 2) in accordance with the correction value from the correction value calculation means (e.g., 33 of FIG.2). Note again the exemplary disclosure at page 17, lines 11-22, as well as the exemplary disclosure associated with the flowchart of exemplary FIG. 3.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3-5, 7-9, 11, and 12 have been finally rejected under 35 U.S.C. §103(a) as being unpatentable over Gandhi et al. (U.S. Patent No. 6,944,449, Gandhi) in view of Khaleghi et al. (U.S. Patent No. 6,975,609, Khaleghi) and Claims 2, 6, and 10 have been finally rejected under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi and in further view of Peisa et al. (U.S. Patent No. 6,850,540, Peisa).

VII ARGUMENT

A. The Rejection of Claims 1, 3-5, 7-9, 11, and 12 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi.

1. Independent Claims 1, 5, and 9, common arguments

The final Action acknowledges (page 3, lines 15-18) that Gandhi does not disclose the system including packet users of an associated packet switching system as well as other user of an associated circuit switching system and also does not disclose calculating a correction value in accordance with a number of actively connected packet users as to the subject matter of independent Claims 1, 5, and 9. However, this acknowledgement reflects an incomplete and inaccurate evaluation of Gandhi as well as an inaccurate and incomplete analysis as to the subject matter of independent Claims 1, 5, and 9.

It is respectfully submitted that the Supreme Court requires any rejection made under 35 U.S.C. § 103 to include a determination of the scope and content of the prior art followed by ascertaining correctly the differences between the prior art and the subject matter of the claims at issue. *See Graham v. John Deere*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966). In determining the scope and content of the prior art and

ascertaining the differences between the prior art and the subject matter of the claims at issue, the precedent of the U.S. Court of Appeals for the Federal Circuit as to interpreting the teachings of the prior art references at issue is clearly binding on the PTO. See *In re Lee* 277 F.3d 1338, 1345, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002) ("As discussed in *National Labor Relations Bd. v. Ashkenazy Property Mgt. Corp.*, 817 F.2d 74, 75 (9th Cir. 1987), an agency is 'not free to refuse to follow circuit precedent.'").

Accordingly, in determining the scope and content of the teachings and suggestions of Gandhi and Khaleghi, the PTO analysis must comport to the precedent of the U.S. Court of Appeals for the Federal Circuit as to properly interpreting the teachings of the prior art references. In this regard, the relevant precedent requires that "[reference] statements cannot be viewed in the abstract" because reference teachings must be determined based on "the context of the teaching of the entire reference." *See In re Kotzab* 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). This is a well established precedent, further note *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984) requiring "a fair reading of the prior art reference as a whole," and *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965) warning the PTO that "it is impermissible within the framework of §103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art."

Thus in interpreting the teachings of Gandhi it is clearly erroneous to attempt to view the abstract of this reference as teaching measuring any random performance indicator that might strike the artisan's whimsy. In this regard, the abstract notes that the performance indicators of concern must be "for a reverse link associated with a

subscriber station seeking access to a wireless communication system" and not just any "measured performance indicator."

Nevertheless, the bottom of page 2 of the Advisory Action mischaracterizes Gandhi as teaching "a system and method of controlling access of subscriber stations to a wireless communications system based on a first and second measured performance indicator (See the abstract of Ghandhi)." This is a clearly improper attempt to view the suggestion of the Gandhi abstract as to the first and second measured performance indicators as pointing to other measured performance indicators lacking any relationship to reverse link conditions.

Furthermore, the abstract of Gandhi not only indicates that the first and second measured performance indicator are "for a reverse link associated with a subscriber station seeking access to a wireless communication system," it also teaches that a "blocking threshold value is established based upon the measured second performance indicator [for a reverse link as noted above]." In addition, the abstract expressly notes that "[t]he decision to grant or deny access of the subscriber station to the wireless communication system is determined based on a comparison of the measured first performance indicator to the established blocking threshold value."

Thus, access connections taught by the Gandhi abstract are based on a "blocking threshold value" that is based on the measured reverse link indicator, not on any number of active or inactive users that are connected. In addition, note FIG. 2 that summarizes the steps of the operations to be performed based on these teachings.

As was noted at pages 8-9 of the response filed September 20, 2006:

> In another species, Gandhi suggests a different approach involving blocking thresholds associated with station loading levels as explained at col. 5, line 59-col. 6, line 59. Again, measured loading levels do not suggest that existing connected numbers of users are the concern.

Moreover, while FIGS. 4 and 5 of Gandhi suggest reverse channel frame error

rate monitoring and dropped call monitoring to compare to nominal values to determine if a blocking threshold is to be temporarily altered, not any calculating of a correction value in accordance with a number users.

In any event, when properly considering the full context of the relied upon Gandhi abstract, and not improperly extracted snippets of those teachings lifted out of context, it is clear that the Gandhi abstract includes no suggestion to use any measured performance indicator that is not based on the reverse link of the base station that a subscriber is seeking to access.

In contrast to these actual teachings of Gandhi, the actual teachings of Khaleghi considered in their required context are devoid of any suggestion of using any reverse link threshold criteria or blocking thresholds associated therewith. Instead, the teachings in Khaleghi are that there are both voice and data users which require different power reserves and that "AVE" is determined based upon total traffic expressed in terms of equivalent voice users. See col. 6, lines 59-67. In detail, the Khaleghi approach is to calculate powers for voice and data callers and then dynamically allocate resources between these voice and data users as further explained at col. 8, lines 25-31. Accordingly, new voice user admission in Khaleghi depends on residual resources that would remain for data users after grant of access as explained at col. 8, lines 55- 61. Similarly, the Khaleghi granting of data call access is explained at col. 9, lines 36-38, as being "based on the residual 'reserved' power of data calls rather than the actual power consumed by data calls."

Clearly, the teachings of Gandhi and those of Khaleghi are not related and cannot be "combined" in any manner that will not destroy the completely different operating principle of the other. Thus, the suggested modification of Gandhi based upon Khaleghi lacks the required "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" required by *In re Kahn*,

441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). In this regard, it is submitted to be irrational to suggest that the artisan would attempt to modify a reference so that it would no longer operate in the intended manner.

> Moreover, and as noted in the response filed September 20, 2006
>
> [A] properly established *prima facie* case of obviousness cannot based on reference modifications that will require a "substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." See *In re Ratti*, 270 F.2d 810, 813, 123 USPQ 349, 352 (CCPA 1959). This prohibited "substantial reconstruction and redesign of the elements shown in Gandhi as well as a change in the basic principle under which the Gandhi construction was designed to operate is exactly what is required if Gandhi is to be modified in accordance with Khaleghi.

The paragraph bridging pages 2 and 3 of the Advisory Action of May 30, 2007 answers this point by again improperly taking the teachings of both references out of context and generalizing these teachings in a manner not taught by either reference. In this regard, the teaching of Gandhi is improperly abstracted at page 3, lines 7-8, of the Advisory Action relative to "column 3 lines 42-49 and column 4 lines 47-50." However, "column 3 lines 42-49 and column 4 lines 47-50" are specific to using the "second performance indicator" noted above to be "for a reverse link associated with a subscriber station seeking access." This is a characteristic of the reverse link itself and has no relationship to the Khaleghi teachings of performing calculations as to types of users. The differences in operating principles between these two different approaches could not be clearer.

In addition, the paragraph bridging pages 3 and 4 of the Advisory Action includes clear misstatements as to the second indicator teaching of Gandhi. Nothing in the referenced Gandhi abstract suggests that the second measured performance indicator is anything but a reverse link measured parameter. *See In re Kotzab*, 217

F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) and the court's requirement that there must be relevant evidence as a reasonable mind might accept as adequate to support the conclusion that seemingly different language has an equivalent meaning. The teaching of Gandhi is clearly that the second measured performance indicator is directly concerned with the performance of the reverse link.

As further noted in the response filed April 24, 2007:

> Not only has the PTO improperly taken the above-noted reference teachings as to problems being addressed and the criteria to be measured completely out of context and improperly expand them, it has also improperly suggested that the express words of the claims can be ignored by simply assuming that different words and functions specified by the reference are equivalent thereto. However, the argued calculation of a "loading average of the active packet calls" that is "used to adjust a threshold percentage of the amount of resources to assign to all packet data calls" of lines 11-14 of page 7 of the outstanding Action is not the equivalent of the Claim 1 step requiring "calculating a correction value in accordance with a number of actively connected packet users of said packet switching" simply because the PTO asserts some undefined relationship exists between the argued loading average and the number of active data packet users.

The Advisory Action seeks to buttress this improper equating of the calculation of a "loading average of the active packet calls" that is "used to adjust a threshold percentage of the amount of resources to assign to all packet data calls" to the Claim 1 step requiring "calculating a correction value in accordance with a number of actively connected packet users of said packet switching" by selectively considering the equations at columns 7-9 of Khaleghi and by misconstruing the "reserved power for data calls" suggested by Khaleghi.

In this regard, the "reserved power for data calls" suggested by Khaleghi contemplates consideration of the residual `reserved` power of data calls rather than the actual power consumed by data calls. This reserved power is a function of the admitted data calls, regardless of whether these admitted data calls are presently transmitting bursts in the radio channel, i.e. it is not limited to only considering the

number of active data users (N_B) as incorrectly asserted.

Further note the Request for Reconsideration filed April24, 2007, that noted:

> In this regard, Khaleghi teaches (at col. 3, lines 39- 41 that the load of an individual data call is "unpredictable because of the bursty nature of data calls, ranging from a dormant or no load state to a substantial load during a burst period if a high data rate is used." Such unpredictability of load as to each data call clearly belies the PTO position at lines 11-12 of page 7 of the outstanding action that asserts that "[t]he loading average is related to the number of active data packet users."

Rather than address this point by pointing to any specific teaching in Khaleghi, page 4 of the Advisory Action again seeks to take an incomplete statement from Khaleghi from col. 7, lines 1-8. The full teaching of Khaleghi is that:

> Note that an estimate of the current load for data calls will correspond only to those data calls that are presently transmitting bursts of data. **There may be other data calls, however, that still have channel resources allotted to them that are not presently active. These admitted data calls may become active and begin transmitting bursts of data within a radio channel. Thus, a data call admission policy should account for all the admitted data calls whether or not they are presently transmitting bursts in the radio channel**. In one embodiment, the present invention accounts for these potentially active data calls by **basing the admission of a data call request upon a "reserved" power that is a function of the presently admitted data calls and the data call seeking admission**. (Emphasis added.).

Accordingly, and contrary to the assertions in the outstanding Action and the Advisory Action, even if the artisan would, for some unknown reason, combine the actual teachings of these reference, there would still be no resulting subject matter that would calculate the claimed correction value in the required manner, i.e., in accordance with a number of **actively connected** packet users and not just connected packet users that are inactive as well as active.

2. Independent Claim 9 specific arguments

Independent Claim 9 differs from method Claim 1 by specifying a base station device with means plus function limitations. In this regard, the PTO reviewing court has emphasized that conclusory findings that omit a proper analysis as to all such means limitations are improper. *See Gechter v. Davidson* 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997) as follows:

> In addition, the [PTO] never construed the scope of the structures disclosed in the specification for the claimed "receiving means," nor did the [PTO] expressly find that the "receiving means" disclosed in the specification was structurally equivalent to that embodied in [the reference]. Moreover, the [PTO] also failed to define the exact function of the receiving means, as well as to find that [the reference] disclosed the identical function. [Emphasis added, citation omitted.]

B. The Rejection of Claims 2, 6, and 10 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi and in further view of Peisa

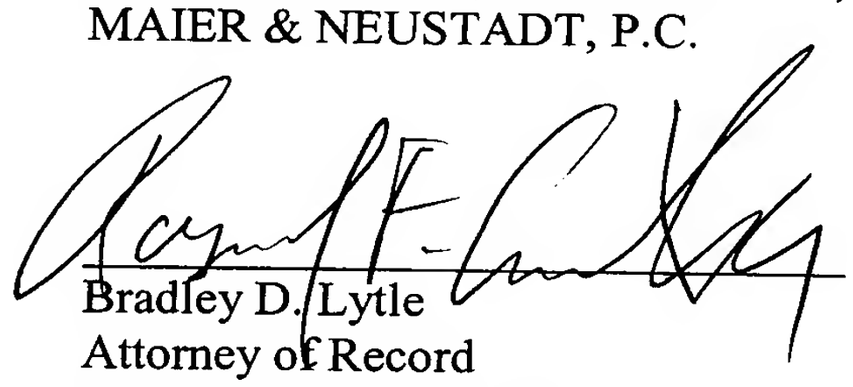
With further regard to the rejection of dependent Claims 2, 6, and 10 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi and in further view of Peisa, it is noted that Peisa does not cure the above noted defects of Gandhi and Khaleghi. Accordingly, as these dependent claims each depend from a respective one of the independent Claims 1, 5, and 9, the rejection of these dependent claims is submitted to be in error for the same reasons as the corresponding independent claim.

CONCLUSION

Accordingly, it is respectfully submitted that the rejection of Claims 1, 3-5, 7-9, 11, and 12 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi and the rejection of Claims 2, 6, and 10 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi and in further view of Peisa are both clearly improper for all the reasons noted above and should be reversed under the controlling precedent also cited above.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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VIII. CLAIMS APPENDIX

1. A call acceptance control method in a mobile communication system including packet users and an associated packet switching system producing packet calls and other users and an associated circuit switching system producing other calls, the method comprising:

connecting the packet users and the other users to provide multiple access calls with shared wireless resources;

measuring a resource use condition based upon existing connections provided by the connecting step;

restricting acceptance of new calls for connection in the connecting step when a value of said resource use condition measured in the measuring step exceeds a set call acceptance threshold value;

calculating a correction value in accordance with a number of actively connected packet users of said packet switching system; and

adjusting the restriction of said new call acceptance in accordance with said call acceptance threshold value in the restricting step by using the correction value calculated in the calculating step.

2. The call acceptance control method according to claim 1, wherein:

said packet calls produced by said packet switching system include guaranteed-bandwidth packet calls produced by a guaranteed-bandwidth packet switching system; and

calculating said correction value in accordance with a number of guaranteed-bandwidth packet users of said guaranteed-bandwidth packet switching system as said number of actively connected packet users of said packet switching system.

3. The call acceptance control method according to claim 1, wherein the restriction of said new call acceptance is adjusted by lowering said call acceptance threshold value in accordance with said calculated correction value.

4. The call acceptance control method according to claim 1, wherein the restriction of said new call acceptance is adjusted by raising the measured value of said resource use condition in accordance with said calculated correction value.

5. A mobile communication system including packet users and an associated packet switching system producing and other users and an associated circuit switching system producing other calls, comprising:

a transmitting/receiving section configured to connect with the packet users and the other users to provide multiple access calls with shared wireless resources;

a resource measurement device configured to measure a resource use condition based upon existing connections provided by the transmitting/receiving section;

a call acceptance control device configured to restrict acceptance of new calls by the transmitting/receiving section when a measured resource use condition value from said resource measurement device exceeds a set call acceptance threshold value;

a correction value calculation device that calculates a correction value in accordance with a number of actively connected packet users of said packet switching system; and

an adjustment device that adjusts the restriction of said new call acceptance by the transmitting/receiving section in accordance with said correction value.

6. The mobile communication system according to claim 5, wherein:

said packet calls produced by said packet switching system include guaranteed-bandwidth packet calls produced by a guaranteed-bandwidth packet switching system; and

said correction value calculation means calculates said correction value in accordance with the number of guaranteed-bandwidth packet users of said guaranteed-bandwidth packet switching system.

7. The mobile communication system according to claim 5, wherein said adjustment device adjusts the restriction of said new call acceptance by lowering said call acceptance threshold value in accordance with said correction value calculated by said correction value calculation device.

8. The mobile communication system according to claim 5, wherein said adjustment device adjusts the restriction of said new call acceptance by raising the measured value of said resource use condition in accordance with said correction value calculated by said correction value calculation device.

9. A base station device configured to provide mobile communication for packet users and an associated packet switching system producing packet calls and for other users and an associated circuit switching system producing other calls, comprising:

a transmitting/receiving means for connecting the base station with the packet users and the other users to provide multiple access calls with shared wireless

resources;

resource measurement means for measuring a resource use condition based upon existing connections provided by the transmitting/receiving means;

call acceptance restriction means for restricting acceptance of new calls by the transmitting/receiving means when a measured resource use condition value from said resource measurement means exceeds a set call acceptance threshold value;

correction value calculation means for calculating a correction value in accordance with a number of actively connected packet users of said packet switching system; and

adjustment means for adjusting the restriction of said new call acceptance by the transmitting/receiving means in accordance with said correction value.

10. The base station device according to claim 9, wherein:

said packet calls produced by said packet switching system include guaranteed-bandwidth packet calls produced by a guaranteed-bandwidth packet switching system; and

said correction value calculation means calculates said correction value in accordance with the number of guaranteed-bandwidth packet users of said guaranteed-bandwidth packet switching system.

11. The base station device according to claim 9, wherein said adjustment means adjusts the restriction of said new call acceptance by lowering said call acceptance threshold value in accordance with said correction value calculated by said correction value calculation means.

12. The base station device according to claim 9, wherein said adjustment means adjusts the restriction of said new call acceptance by raising the measured value of said resource use condition in accordance with said correction value calculated by said correction value calculation means.

IX. EVIDENCE APPENDIX

NONE

X. RELATED PROCEEDINGS APPENDIX

NONE